STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF TAUNTON BAY OYSTER COMPANY, INC. FOR AN AQUACULTURE LEASE LOCATED IN TAUNTON AND HOG BAYS, FRANKLIN, HANCOCK COUNTY, MAINE	**)** **)** **)** **)**	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

On October 21, 2002, Taunton Bay Oyster Company, Inc. of Ellsworth, Maine applied for an aquaculture lease totaling 7.47 acres in the coastal waters of the State of Maine, located in Taunton and Hog Bays, in Franklin, Hancock County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating Eastern oysters (Crassostrea virginica), using bottom and suspended culture techniques. The application was accepted as complete on October 29, 2002. A public hearing on this application was held on June 18, 2003 at 10:00 a.m. in Franklin. Intervenor status was granted to Friends of Taunton Bay (hereafter referred to as FOTB), represented by Steve Perrin (hereafter referred to as Intervenor Perrin), Conservation Law Foundation (hereafter referred to as CLF), represented by Roger Fleming (hereafter referred to as Intervenor Fleming), Taunton Bay Riparian Landowners (hereafter referred to as TBRL), represented by Susan Braley (hereafter referred to as Intervenor Braley), and Suzanne Schaller (hereafter referred to as Intervenor Schaller).

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the June 18, 2003 public hearing. At the public hearing, testimony was given by Michael Briggs and Chris Davis, representing the applicant Taunton Bay Oyster Company, Jon Lewis, the Department's Aquaculture Environmental Coordinator, Scott Lindsay from the Maine Department of Inland Fisheries and Wildlife (hereafter IF&W), Shawn Mahaney from the U.S. Army Corps of Engineers (hereafter USACOE), Intervenor Schaller, Intervenor Perrin, Intervenor Fleming, Intervenor Braley, and several members of the public.

According to the application and the testimony by Chris Davis and Michael Briggs, the proposed aquaculture lease is sought to raise Eastern oysters. The applicant requested a lease site totaling 7.47 acres and a lease term of ten (10) years. The requested lease site consists of two tracts. Tract 1 is 1.19 acres and is located in Hog Bay, and tract 2 is 6.28 acres and is located in the upper reaches of Taunton Bay. The proposed lease activities for tract 1 consist of bottom and suspended culture, and proposed tract 2 activities are bottom only.

According to the application and testimony by the applicant, the proposed lease activities would consist of growing seed oysters in floating trays in tract 1. The trays would consist of black mesh ADPI bags and blue Styrofoam floatations with dark green netting, and would be approximately 3 inches above the surface of the water. A maximum of twelve arrays of trays, with 150 trays per array are proposed for the lease site. Each array would be separated by 15-20 feet to allow for boat access between arrays of trays. In year one, the applicant proposes to deploy 750-900 trays, with an additional 750-900 trays the following year. According to the application, full nursery production would be 1,500,000 oysters. Nursery cultivation would typically commence in May or June of each year with the deployment of juvenile shellstock in

screened trays. Cleaning of trays would be performed several times weekly to remove fouling organisms by hand scrubbing or by flipping the trays. Thinning and transferring of seed would typically occur in July and August of each year. According to the application, the nursery trays would be emptied in the fall and the oysters would be planted on the bottom of tracts 1 and 2. Maximum planting density on the bottom would be approximately 10-15 oysters per square foot. Oysters that are too small to bottom plant may be over-wintered on tract 1 by submerging the oysters in ADPI bags. All seed shellfish will be obtained from a hatchery in Maine, such as Pemaquid Oyster Company, Muscongus Bay Aquaculture or Marshall Point Sea Farm. The proposed lease site would be accessed from the Sullivan town landing in a 21-foot Carolina skiff with a four-stroke engine. Boat traffic associated with the proposed lease would consist of an average of two transits per day, 3-5 times per week. Harvesting of the oysters would occur after year two and would be done by diver several times per week.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. A site survey was performed by the applicant on June 10 and August 20, 2002 at low water. According to the application, the site was selected for numerous reasons, including the local hydrography and biological productivity. According to the applicant, water depths in tract 1 range from 2 to 6 feet at low water. The bottom of tract 1 is comprised of sandy silt sediments. Tract 2 water depths range from 10 to 17 feet at low water. The bottom of tract 2 is also comprised of sandy silt sediments. The current flow is approximately 25 cm per second and flows in an east/west direction in tract 1 and a north/south direction in tract 2. According to the application, flora and fauna observed at the proposed site consist of a common occurrence of rock crabs, green crabs, hermit crabs, periwinkles, barnacles, and sand shrimp, and a rare occurrence of blue mussels, rockweed and kelp.

Dr. Davis provided testimony regarding the ecological impact of growing Eastern oysters in Taunton and Hog Bays. He testified that he has a Ph.D. in shellfish biology and that he has been growing oysters for seventeen years. According to Dr. Davis, Eastern oysters are native to

Maine waters and are grown from Machias to the Piscataqua River. Historically, Eastern oysters are found up and down the coast, evidenced by shell middens found in Isle au Haut and Deer Isle. Dr. Davis testified that perhaps the reason why oysters are not found in Taunton Bay is that they cannot reproduce in the bay. He testified that he would be surprised if oysters could reproduce in Taunton Bay, but if they did they would probably settle in the intertidal zone and die during the winter. According to Dr. Davis, oyster farming has existed in the Damariscotta River for 20 years. He testified that four years ago, wild oysters were found on the ledges in the Damariscotta River. However, the oysters are harvested and they have not seen a prolific population of wild oysters in the Damariscotta River. Additionally, Dr. Davis testified that in his experience growing oysters in the Damariscotta River, oysters and horseshoe crabs coexist and he has observed horseshoe crabs come and go over the bottom leases and under the floating trays. Dr. Davis also testified that seal pups hang out on the oyster trays in the Damariscotta River. Dr. Davis compared the Damariscotta River to Taunton Bay, stating that they have the same resident flora and fauna and are both estuarine environments with wide temperature and salinity regimes. According to Dr. Davis, oyster aquaculture is an environmentally benign activity, and would have a negligible and possibly beneficial impact to Taunton and Hog Bays.

According to the application, there are no docks or moorings located within the proposed site. The proposed lease activities, according to the applicant, would not interfere with access to any moorings or docks placed in the area in the future. According to the application, navigational use of the area is limited at low tide due to the extensive mudflats to the west, north and east of the proposed lease site. Small vessel traffic generally traverses in a north/south direction over or to the east of the proposed site. According to the application, there is minimal commercial fishing on the proposed site. There are no known fishermen who actively use the proposed site. According to the application, recreational fishing, lobstering and crabbing would be allowed at the proposed site.

The Department's Aquaculture Environmental Coordinator (AEC) conducted a site visit at the proposed lease area on November 14, 2002. During the site visit, a survey, utilizing SCUBA

and an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and he provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, tract 1 of the proposed site is located at the head of a channel and is surrounded by mudflats. The bottom of tract 1 is semi-firm, consisting of sand, mud, cobble and an occasional rock outcrop. Tract 2 of the proposed site is located in the western branch of the main channel of Taunton Bay. The bottom of tract 2 consists of thick, soft mud with an occasional rock. At low water, mudflats are exposed to the east and west, and a series of rock ledges are exposed to the southeast and southwest of tract 2. Depths at tract 1 of the proposed site range from approximately 3.6 to 12.66 feet at MLW and 14.10 to 23.16 feet at MHW. The depth recorded at tract 2 during the SCUBA survey was 23 feet at low tide. During the site visit, the proposed lease site consisted of water temperatures of approximately 46.01-46.52°F at tract 1 and dissolved oxygen levels ranging from 84.3-101.6% saturation.

According to the AEC, the local flora and fauna observed at tract 1 of the proposed lease site consisted of an abundance of sand shrimp and brown alga, a common occurrence of finger sponges, an occasional occurrence of sea stars and rock crabs, and a rare occurrence of empty shells of soft shell dams and hard clams. Local flora and fauna observed at tract 2 consisted of an abundance of sand shrimp and brown alga, a common occurrence of crabs and sea stars, and an occasional occurrence of finger sponges and burrows. Detached eelgrass was observed in both tracts. The AEC described the lease area as a rich phytoplankton area and testified that the oysters would not rob the bay of food. Harbor seals were observed hauled-out on the half-tide ledges located to the southwest and southeast of tract 2. According to the AEC, the proposed activities are not expected to have any more of an impact on the harbor seals than other activities that occur in the area. He testified that with good behavior, the lease activities can occur around the seals without having an impact on the seals. He testified that seals habituate to human behavior. The AEC testified that he recommends that divers

harvesting oysters should conduct their dives either at high tide when seals are not present or in the direction away from the seals, so as not to surface near the ledges when seals are present.

According to the site report, there were no moorings observed in the area of the proposed lease site during the site visit. According to the AEC, the proposed lease activities would not interfere with riparian ingress and egress.

According to the AEC, the proposed lease activities would not interfere with navigation. At Mean Low Water, the majority of Hog Bay drains to mudflats. A single, shallow channel occupies the center of the bay. Tract 1 is located along the southern perimeter of the channel mouth. According to the site report, vessel traffic in the area at low tide is likely to be restricted to skiffs, canoes and kayaks. According to the AEC, the floating bags in tract 1 are unlikely to hinder vessel transit in the area, because vessels that can navigate in the shallow regions of the bay would be able to traverse to the north of the proposed lease site. Tract 2 is located in one of two narrow channels in the upper portion of Taunton Bay. There is a minimum of 162 feet of water remaining between the northern boundary of tract 2 and the northern boundary of the navigational channel. A second, 300-400 foot wide navigational channel is located to the south of tract 2. The proposed lease activities on tract 2 consist of freely planting oysters on the bottom. Thus, according to the AEC, no interference with navigation is expected in tract 2.

According to the site report, no fishing was observed in the proposed lease area during the site visit. The majority of lobster and crab traps were likely moved to deeper water prior to the date of the site visit. According to the AEC, limited commercial fishing can be expected in the area. Some lobster and crab fishing occurs to the south of the ledges separating Taunton and Hog Bays. Worm and clam digging is likely to occur in the surrounding mud flats. Recreational fishing likely occurs in the area. According to the AEC, the proposed lease activities would not interfere with fishing in the area. The nearest aquaculture lease site is located approximately 7.3 miles southeast of the proposed site.

A Harbormaster questionnaire was sent to the town of Franklin. The town does not employ a Harbormaster, but selectman Bruce Carter answered and returned the questionnaire.

Mr. Carter indicated that the proposed lease would not interfere with navigation, moorings, storm anchorages, shorefront property access, or any public facilities located within 1,000 feet of the proposed lease site. He also indicated that the moorings described by the applicant were adequate.

According to the site report, the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Also, according to the report, tract 1 of the proposed lease site is located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W), as it is located within 1320 feet of a bald eagle nest. According to the AEC, Taunton Bay also provides habitat for a number of other birds including ospreys, cormorants, waterfowl and migrating passerines.

The AEC testified regarding a research paper that was prepared by the Department regarding the introduction of oysters into Taunton and Hog Bays. The paper, entitled "Oysters in Taunton Bay – The State of our Understanding" (hereafter referred to as DMR oyster paper), was introduced into evidence at the hearing. (Exhibit 10). Intervenors and members of the public were given two weeks to submit comments on the oyster paper. The DMR oyster paper addresses concerns regarding the ecological impact of raising oysters in Taunton Bay. The paper states that Eastern oysters range from the Gulf of St. Lawrence to the Yucatan Peninsula. However, there is no evidence of self-sustaining populations of Eastern oysters in Taunton Bay. The introduction of Eastern oysters into Taunton Bay, according to the DMR oyster paper, may or may not be accurately characterized as introducing an exotic species since the bay is within the known range of the Eastern oyster. According to the paper, there is reason to believe that oysters could reproduce, settle and become part of the Taunton Bay ecosystem. Assuming that oysters will spawn, settle, recruit and establish pockets of self-sustaining numbers, the DMR oyster paper concluded that such pockets of oysters would likely have little impact on the Taunton Bay ecosystem. Horseshoe crabs and blue mussels would not be adversely impacted by the presence of oysters, and depletion of oxygen in the bay would be negligible.

According to the AEC's site report, horseshoe crabs have been identified as an important aquatic resource in Taunton Bay and there are ongoing studies of the horseshoe crabs in the bay. The studies include a tagging project designed to describe population dynamics, and a radio-telemetry study designed to discern the extent that crabs use areas in the bay likely to be dragged. According to the AEC, shellfish aquaculture and horseshoe crabs co-exist in other parts of Maine, including large amounts of both in the Damariscotta and Bagaduce Rivers. The DMR oyster paper also addresses the effects that growing oysters in Taunton Bay would have on the ongoing horseshoe crab studies. According to the DMR oyster paper, principal investigators for the studies believe that if oysters are placed on the bottom prior to completing the radio-telemetry study in the spring of 2004, crab behavior may change. The DMR oyster paper also states that DMR divers have observed Eastern oysters co-existing with horseshoe crabs in the Damariscotta River, the Bagaduce River, the Piscataqua River, and Squam Creek Salt Pond. Horseshoe crabs were observed freely moving over the oysters that had been planted on the bottom.

Scott Lindsay, a wildlife biologist with IF&W, testified regarding the eagle nest located near the proposed lease site. He testified that a portion of the proposed lease site falls within one quarter mile of an eagle's nest located on Buckskin (Round) Island and is thus located within an essential habitat. However, he testified that the proposed activities will not have an impact on the nest, as long as certain limitations are imposed and recommended that activities on tract 1 of the lease not begin until June first every year. He testified that the lease would have to go through essential habitat review with IF&W before lease activities may begin.

Shawn Mahaney of the USACOE provided testimony at the hearing. He submitted a letter issued by the US Fish and Wildlife Service under Section 7 of the Endangered Species Act (Exhibit 11). The letter states that the Service believes that minor modifications can be utilized to minimize adverse effects to the pair of eagles on Buckskin Island. The letter contains terms and conditions that must be included in any permit issued by the USACOE to Taunton Bay Oyster Co., regarding lease activities in Tract 1. The conditions that must be implemented by the

USACOE are: 1) installation of aquaculture facilities shall begin after May 10 starting at the southeast corner of the lease; 2) oysters over-wintered on tract 1 will be submerged at the southeast end of the lease and brought to the surface after April 1; 3) nursery cultivation will commence after May 10 starting at the southeast end of the lease; and 4) the applicant shall not use Buckskin Island for mooring boats, storing equipment or other uses.

Intervenor Schaller provided written and oral testimony (Exhibit 8). She testified that she is the principle investigator for the Maine Horseshoe Crab surveys and that she is in the third year of a ten-year study of horseshoe crabs in Taunton Bay. She testified that the purpose of the study is to determine horseshoe crab populations by conducting spawning counts, and that the proposed activities will damage the study by altering the assumptions on which the study is based. The counts are conducted from the middle of May to the end of June in a 380-meter transect on Shipyard Point. According to Intervenor Schaller, the Taunton Bay study site appears to be unique within the U.S. range of the species because it offers the opportunity to study an isolated natural population in a habitat with minimal human activity and no known history of harvest. Intervenor Schaller testified that horseshoe crabs rely on sub-tidal areas as retreat during low tides and as corridors for daily and seasonal migrations, and adding a new species to the bottom of the bay and potentially blocking movement patterns will alter the behavior of the animals and thus may affect the results of the study by adding a variable. She testified that she is more concerned with tract 1 of the proposed lease because it is located closer to the study area on Shipyard Point. She testified that tract 2 is more distant from Shipyard Point and will not have as much of an impact. When asked whether she would be as concerned if there were only floating trays and no bottom planting of oysters in tract 1, intervenor Schaller stated that there would not be as much of an issue. Intervenor Schaller also testified that she opposes the proposed lease because Eastern oysters have not been historically documented in Taunton Bay. She testified that water temperatures in the bay are warm enough for oysters to reproduce, and thus permanently alter the existing ecosystem. She testified that although horseshoe crabs and

oysters co-exist in other areas, Taunton and Hog Bays have large amounts of mudflat exposed at low tide and thus create more competition for remaining sub-tidal habitats.

Intervenor Perrin provided written and oral testimony on behalf of FOTB (Exhibit 4). Intervenor Perrin provided testimony relating to five of the seven decision criteria. With regard to navigation, he testified that FOTB is concerned with the potential for a diver on the lease site to strike a boat as he swims to the surface. With regard to other uses of the area, Intervenor Perrin testified that the ongoing horseshoe crab studies constitute other uses of the area. He testified that any decision regarding aquaculture in Taunton Bay should be held off for one year, which is when the telemetry study will be completed. With regard to existing flora and fauna, Intervenor Perrin testified that FOTB is concerned with the effects the lease activities may have on a pair of bald eagles that nest on Round Island, shorebirds, and horseshoe crabs. He testified that the proposed activities should be restricted to those times of year when the eagles are not acting territorially in the area surrounding their nest. He indicated a concern for the effect that the proposed activities may have on shorebird migration, questioning whether the oysters would deplete the algae and plankton on which amphipods feed, thus depleting the food source of the shorebirds. Intervenor Perrin also expressed a concern for effect of the proposed lease activities on the lives of the horseshoe crabs. He testified that more information must be gathered prior to placing oysters in Taunton Bay. Intervenor Perrin also testified that introducing Eastern oysters will affect the balance of the ecological community because they are a nonnative species. Finally, Intervenor Perrin questions the sufficiency of the information in the AEC's site report because the site visit occurred in November. Intervenor Perrin also submitted comments in response to the DMR oyster paper. He stated in his comments that he does not believe that information gathered from other areas is sufficient, and that further study of Taunton Bay needs to be undertaken prior to the granting of a lease in the bay.

Intervenor Braley provided written and oral testimony on behalf of TBRL (Exhibit 5). She testified that TBRL is concerned about the impacts of the proposed lease activities upon the harbor seal population that haul out on rocks located near tract 2 of the proposed lease site. She

also testified that Taunton Bay has been designated a Class A Wildlife Habitat, and that commercial activities should not be introduced into the area. Intervenor Braley testified that Eastern oysters are an exotic species and should not be introduced until adequate risk assessment takes place. According to Intervenor Braley, the proposed lease activities will partially block the channels connecting Hog Bay to the rest of the bay and negatively impact recreational boating enjoyment. She testified that she usually boats at high tide. In support of her testimony, Intervenor Braley provided visual images of seals in the bay, and excerpts from a 1979 Resource Assessment of the Town of Franklin, the 1993 Franklin Comprehensive Plan, and the 2002 Taunton Bay Region Survey conducted by Maine Sea Grant. Intervenor Braley also submitted comments in response to the DMR oyster paper.

Intervenor Fleming provided testimony on behalf of CLF (Exhibit 17). He testified that the lease activities will unreasonably interfere with ecologically significant flora and fauna, fishing and other uses of the area. According to intervenor Fleming, the proposed lease activities will interfere with horseshoe crabs and horseshoe crab research. Intervenor Fleming testified that the Eastern oyster is an exotic species and that its introduction into Taunton Bay can have irreversible impacts, including competition for food with native clam and worm species. Intervenor Fleming further testified that the proposed lease activities will negatively impact eel grass, eagles, seals and shorebirds. Intervenor Fleming also provided comments in response to the DMR oyster paper. He stated in his comments that, for several reasons, he disagrees with the Department's conclusion that oysters will have little impact on Taunton Bay. Intervenor Fleming also stated that the DMR oyster paper indicates an uncertainty regarding the ecological consequences of the proposed lease.

Several members of the public testified regarding the proposed lease activities. Concerns expressed by the public included the impact of the proposed lease activities on clammers and wormers, seals, recreational boating, and the horseshoe crab studies. Local residents testified they kayak in the bay, but avoid Hog Bay at low tide.

Findings of Fact

The proposed lease site consists of two tracts, located in Taunton and Hog Bays in Franklin, Maine. Access to the proposed lease would be by skiff from the Sullivan town landing. There are no docks or moorings located in the area of the proposed lease site. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

Due to the shallow water depths in the vicinity of tract 1, vessel traffic will be limited to kayaks, canoes and small skiffs. Tract 1 is located along the southern perimeter of a single, shallow channel that occupies the center of the bay at low tide. Vessels that are small enough to navigate the bay at low tide would be able to traverse to the north of tract 1. Additionally, the arrays of trays at tract 1 will be separated by 15-20 feet of open water in which to traverse through at low tide if necessary. At high tide, there is sufficient navigable water to traverse around the lease area. Tract 2 will consist of bottom culture only and therefore will not interfere with navigation. Therefore, I find that the lease will not unreasonably interfere with navigation.

Limited commercial fishing is expected in the area of the proposed lease site. Lobster and crab fishing occur south of the ledges separating Taunton and Hog Bays. Clamming and worming occur in the surrounding mud flats. The nearest aquaculture lease is located 7.3 miles to the southeast of the lease site. Fishing would be permitted in the open areas of the lease. There are two ongoing studies of horseshoe crabs in Taunton Bay. The population study conducts spawning counts on Shipyard Point. The study may be impacted by obstructions on the bottom of tract 1. Therefore, I find that no oysters may be planted on the bottom of tract 1 and no oysters or gear may be over-wintered on tract 1. The radio-telemetry study that is tracking the movement of horseshoe crabs in the bay concludes in the spring of 2004 and oysters on the bottom of the lease may impact the results of that study. Therefore, I find that no oysters shall be planted on the bottom of tract 2 until the fall of 2004. Accordingly, I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area, provided that no oysters are planted on the bottom of tract 1, no gear or oysters are over-wintered on tract 1, and no oysters are planted on tract 2 until the fall of 2004.

Existing fauna observed at the proposed site consists of sand shrimp, brown alga, finger sponges, sea stars, rock crabs and green crabs. The current flow is estimated to be 25 cm per second. Eastern oysters are native to Maine, but are not historically found in Taunton Bay. Eastern oysters are grown in several area of the Maine coast. Even assuming oysters will reproduce and settle in Taunton and Hog Bays, there will be little impact on the bay ecosystem. Oysters co-exist with horseshoe crabs in many other areas on the coast of Maine. Horseshoe crabs move freely over oyster beds and traverse under oyster cages. Depletion of oxygen in the bay would be negligible. The area is rich in phytoplankton and the oysters will not impact the availability of phytoplankton to existing flora and fauna. However, in order to ensure that the lease activities will not negatively impact the ecology of the bay, the applicant and the Department shall monitor the ecological conditions of the area surrounding the lease site in accordance with a monitoring program established by the Department. The applicant shall be required to submit an annual monitoring report in accordance with the program. The Department may seek input from others, such as Friends of Taunton Bay, in establishing the monitoring program. Seals haul out on rocks south of tract 2. Boating activities associated with the lease will not impact the seals any more than the current boating activities on the bay. However, divers may impact the seals and shall conduct dives at high tide when seals are not present or shall conduct dives in the direction away from the seals, so as not to surface near the ledges when seals are present. An eagles nest is located within one quarter mile from tract 1. However, as long as activities on tract 1 commence after June 1st each year, the lease activities will not impact the eagles. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna, provided that the following restrictions are adhered to: the applicant shall monitor the ecological conditions in accordance with a monitoring program established by the Department; the divers shall either conduct dives at high tide or in the direction away from the seal ledges when seals are present; and lease activities in tract 1 shall commence after June 1st of each year.

All seed shellfish will be obtained from a hatchery in Maine, such as Pemaquid Oyster Company, Muscongus Bay Aquaculture or Marshal Point Sea Farm. Based on this evidence, I find that there is an available source of Eastern oysters.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;

2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;

3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area, as long as no oysters are planted on the bottom of tract 1, no gear or oysters are over-wintered on the bottom of tract 1, and no oysters are planted on the bottom of tract 2 until the fall of 2004;

4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna, as long as the applicant monitors the ecological conditions in accordance with a monitoring program established by the Department; the divers either conduct the dives at high tide or in the direction away from the seal ledges when seals are present; and lease activities in tract 1 commence after June 1st of each year;

5. The applicant has demonstrated that there is an available source of eastern oysters; and

6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 7.47 acres from the date of this decision for the purpose of cultivating eastern oysters (Crassostrea virginica) using suspended and bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of $50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of $1,500 if the total square footage of all structures on the lease is less than or equal to 400 square feet or $5,000 if the total square footage of all structures on the lease is greater than 400 square feet, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

(1) Fishing and boating shall be allowed on the open areas of the lease;

(2) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources requirements;

(3) The applicant shall monitor the ecological conditions in accordance with a monitoring program established by the Department;

(4) Lease activities in tract 1 shall commence after June 1st of each year;

(5) Tract 1 shall contain floating gear only. No oysters shall be planted on the bottom of tract 1. No oysters or gear shall be over-wintered on tract 1;

(6) The arrays of floating trays in tract 1 shall be separated by a minimum of fifteen feet;

(7) No oysters shall be planted on the bottom of tract 2 until the fall of 2004;

(8) Harvesting of oysters on tract 2 shall be by diver;

(9) Divers shall conduct dives at high tide or shall conduct dives in the direction away from the seal ledges when seals are present;

(10) The applicant shall not use the shore of Buckskin (Round) Island in connection with the lease activities, except if necessary to remove debris from the shore;

(11) A lease shall not be issued until written approval is received by the Department from the Maine Department of Inland Fisheries and Wildlife in accordance with the essential habitat review process; and

(12) Upon the issuance of the aquaculture lease in accordance with this decision, the four Limited Purpose Licenses issued to Michael Briggs in Hog Bay shall be terminated.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

_____

George D. Lapointe (Commissioner)
Department of Marine Resources